

NON-INTERNATIONAL ARMED CONFLICTS IN INTERNATIONAL LAW

This dispassionate analysis of the legal implications of non-international armed conflicts explores the rules regulating the conduct of internal hostilities, as well as the consequences of intervention by foreign States, the role of the UN Security Council, the effects of recognition, State responsibility for wrongdoing by both Governments and insurgents, the interface with the law of human rights and the notion of war crimes. The author addresses both conceptual and specific issues, such as the complexities of 'failing' States or the recruitment and use of child soldiers. He makes use of the extensive case law of international courts and tribunals, in order to identify and set out customary international law. Much attention is also given to the contents of available treaty texts. This new updated edition takes into account the latest events in terms of the practice of States, judicial pronouncements and UN Security Council resolutions.

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YORAM DINSTEIN



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PREFACE

Due to their preponderance and intensity, non-international armed conflicts are currently very much in the public mind: often, more so than international armed conflicts. The present volume serves as a comprehensive introduction to the international legal regime of non-international armed conflicts, proceeding strictly in light of what the contemporary law is (as distinct from what the present author or anybody else would like it to be).

Non-international armed conflicts raise a raft of issues that need to be addressed, including in particular their preconditions, thresholds, diverse forms and configurations; the discordant perspectives of the international and domestic legal systems; as well as the application of treaty and customary law to non-State actors. In addition, it is necessary to examine the consequences of intervention by foreign States; the role of the Security Council; the effects of recognition; State responsibility for wrongdoing to the installations, diplomats or nationals of foreign States, etc. The interface between the law of international and non-international armed conflicts is a matter of crucial concern. There are also numerous specific problems, ranging from the complexities of ‘failing States’ to the recruitment and use of child-soldiers.

The main thrust of the book relates to the law regulating hostilities. Conduct of hostilities in non-international armed conflicts, once virtually overlooked by international law, is currently ingrained in the *lex lata* to an ever-increasing extent. The process is primarily the outcome of a substantial body of case law delivered by international courts and tribunals.

There is an ineluctable intersection between the law of non-international armed conflicts, human rights law and international criminal law. To avoid confusion, it is necessary to look carefully for guidelines indicating which legal norms are applicable in any given situation.

Much attention is devoted in this study to available treaty texts: what they contain and what they do not; what they mean and what can perhaps be read into them. Customary international law coincides with many treaty provisions, but sometimes custom either goes beyond treaty law or falls short of it.

The second edition takes into account the latest events (until early 2020) in terms of the practice of States, judicial pronouncements and Security Council resolutions. Recent NIACs and new phenomena (such as Da'esh and the struggle against it) have been explored. The entire text has been reviewed and revised to reflect up-to-date developments. The discussion of several themes (e.g., peace accords terminating hostilities or the complicity of intervening States) has been substantially amplified.

The present book serves as a companion to three other volumes published by Cambridge University Press, dealing respectively with the *jus ad bellum*,* the *jus in bello* in international armed conflicts** and the law of belligerent occupation.*** Largely speaking, between them, the four volumes cover the general spectrum of the law of armed conflict in its various aspects. To minimize repetition, matters considered in detail in the companion volumes are not rehashed here.

There is one important omission: namely, the treatment of internees (either in international or in non-international armed conflicts). The reason is that the topic calls for a juxtaposition and analysis of international legal rules affecting diverse categories of civilian detainees – in peacetime and in armed conflict; in inter-State as much as in intra-State strife; and in occupied territories – plus the special status of prisoners of war. Such a comparative survey has to be done methodically, and it is not undertaken in the present book (just as it was not attempted in the companion volumes).

The numerical cross-references in the text of the book (as distinct from the indices) are to paragraphs and not to pages.

To facilitate syntax, generic pronouns relating to individuals are usually drawn in masculine form. This must not be viewed as gender-specific.

* Y. Dinstein, *War, Aggression and Self-Defence* (6th ed., 2017).

** Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd ed., 2016).

*** Y. Dinstein, *The International Law of Belligerent Occupation* (2nd ed., 2019).

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ABBREVIATIONS

<i>AC</i>	Appeal Cases
<i>AFDI</i>	Annuaire Français de Droit International
<i>AFLR</i>	Air Force Law Review
<i>AIDI</i>	Annuaire de l'Institut de Droit International
<i>AJIL</i>	American Journal of International Law
<i>ALF</i>	Amsterdam Law Forum
<i>Amer.</i>	The Americas
<i>AP/I</i>	Additional Protocol I [to the Geneva Conventions]
<i>AP/II</i>	Additional Protocol II [to the Geneva Conventions]
<i>ATT</i>	Arms Trade Treaty
<i>AUILR</i>	American University International Law Review
<i>AUJILP</i>	American University Journal of International Law and Policy
<i>AULR</i>	American University Law Review
<i>AYBIL</i>	Australian Year Book of International Law
<i>Berk.JIL</i>	Berkeley Journal of International Law
<i>BUILJ</i>	Boston University International Law Journal
<i>BWC</i>	Convention on [the Prohibition of the Development, Production and Stockpiling of] Bacteriological (Biological) Weapons
<i>BYBIL</i>	British Year Book of International Law
<i>Cal.LR</i>	California Law Review
<i>Can.YIL</i>	Canadian Yearbook of International Law
<i>Car.LR</i>	Cardozo Law Review
<i>CAT</i>	Convention against Torture
<i>CCCW</i>	Convention on [Prohibitions or Restrictions on the Use of] Certain Conventional Weapons
<i>CCIT</i>	Comprehensive Convention on International Terrorism
<i>Chic.JIL</i>	Chicago Journal of International Law
<i>Chin.JIL</i>	Chinese Journal of International Law
<i>CJEU</i>	Court of Justice of the European Union

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ABBREVIATIONS

<i>CLF</i>	Criminal Law Forum
<i>Col.HRLR</i>	Columbia Human Rights Law Review
<i>Coll.</i>	Collegium
Common Article 3	Article 3 Common to the four Geneva Conventions
<i>Conn.JIL</i>	Connecticut Journal of International Law
<i>Cor.ILJ</i>	Cornell International Law Journal
CPCP	Convention for the Protection of Cultural Property
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSR	Convention Relating to the Status of Refugees
CWC	Convention on [the Prohibition of the Development, Production, Stockpiling and Use of] Chemical Weapons
<i>CWRJIL</i>	Case Western Reserve Journal of International Law
<i>Den.JILP</i>	Denver Journal of International Law and Policy
<i>Den.LJ</i>	Denver Law Journal
<i>DPLR</i>	DePaul Law Review
<i>DukeJIL</i>	Duke Journal of Comparative and International Law
<i>ECA</i>	European Conventions and Agreements
ECHR	European Court of Human Rights
<i>EJIL</i>	European Journal of International Law
<i>Em.LJ</i>	Emory Law Journal
FARC	Colombian Revolutionary Armed Forces
<i>Fl.FWA</i>	Fletcher Forum of World Affairs
<i>Fo.ILJ</i>	Fordham International Law Journal
<i>Ga.JICL</i>	Georgia Journal of International and Comparative Law
<i>Geo.ELR</i>	Georgetown Environmental Law Review
<i>Geo.JIL</i>	Georgetown Journal of International Law
<i>Ger.YIL</i>	German Yearbook of International Law
<i>Har.ILJ</i>	Harvard International Law Journal
<i>Hous.JIL</i>	Houston Journal of International Law
HPCR	Harvard Program on Conflict Research
<i>HRQ</i>	Human Rights Quarterly
<i>Human Rights Instruments</i>	<i>The Raoul Wallenberg Compilation of Human Rights Instruments</i> (G. Melander and E. Alfredsson eds., 1997)
IAC	international armed conflict
IACHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICJ	International Court of Justice
<i>ICJ Rep.</i>	Reports of the International Court of Justice
<i>ICLQ</i>	International and Comparative Law Quarterly
<i>ICLR</i>	International Community Law Review

ABBREVIATIONS

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ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the [Former] Yugoslavia
<i>IHLS</i>	International Humanitarian Legal Studies
<i>IJRL</i>	International Journal of Refugee Law
ILC	International Law Commission
<i>ILC Ybk</i>	Yearbook of the International Law Commission
<i>ILM</i>	International Legal Materials
<i>ILQ</i>	International Law Quarterly
<i>ILS</i>	International Law Studies
IMT	International Military Tribunal
<i>Ind.JIL</i>	Indian Journal of International Law
<i>Int.Aff.</i>	International Affairs
<i>Int.Leg</i>	<i>International Legislation: A Collection of the Texts of Multipartite International Instruments of General Interest</i> (M.O. Hudson ed., 1931–50)
IRA	Irish Republican Army
<i>IRRC</i>	International Review of the Red Cross
<i>Is.LR</i>	Israel Law Review
<i>Is.YHR</i>	Israel Yearbook on Human Rights
<i>It.YIL</i>	Italian Yearbook of International Law
<i>IUSCTR</i>	Iran–United States Claims Tribunal Reports
<i>JCSL</i>	Journal of Conflict and Security Law
<i>JICJ</i>	Journal of International Criminal Justice
<i>JIHLS</i>	Journal of International Humanitarian Legal Studies
<i>JIP</i>	Journal of International Peacekeeping
<i>JUFIL</i>	Journal on the Use of Force and International Law
KLA	Kosovo Liberation Army
<i>L&E</i>	Law and Equality
<i>Laws of Armed Conflicts</i>	<i>The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents</i> (4th ed., D. Schindler and J. Toman eds., 2004)
<i>LCP</i>	Law and Contemporary Problems
<i>LJIL</i>	Leiden Journal of International Law
<i>LNTS</i>	League of Nations Treaty Series
LONIAC	law of non-international armed conflict
LOS Convention	Convention on the Law of the Sea
<i>LPICT</i>	Law and Practice of International Courts and Tribunals
<i>Mac.LJ</i>	Macquarie Law Journal
<i>Mel.JIL</i>	Melbourne Journal of International Law
<i>Mich.JIL</i>	Michigan Journal of International Law

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ABBREVIATIONS

<i>Mich.SILR</i>	Michigan State International Law Review
<i>Mil.LLWR</i>	Military Law and Law of War Review
<i>Mil.LR</i>	Military Law Review
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
<i>MPEPIL</i>	The Max Planck Encyclopedia of Public International Law (2nd ed., R. Wolfrum ed., 2012)
<i>MPYUNL</i>	Max Planck Yearbook of United Nations Law
NATO	North Atlantic Treaty Organization
<i>NDLR</i>	Notre Dame Law Review
NIAC	non-international armed conflict
<i>NILR</i>	Netherlands International Law Review
<i>NSAIL</i>	Non-State Actors and International Law
NTC	National Transitional Council
<i>NYUJILP</i>	New York University Journal of International Law and Politics
<i>PASIL</i>	Proceedings of the American Society of International Law
PCIJ	Permanent Court of International Justice
PGM	precision-guided munition
POW	prisoners of war
<i>RBDI</i>	Revue Belge de Droit International
'R2P'	responsibility to protect
<i>RCADI</i>	Recueil des Cours de l'Académie de Droit International
<i>RGA</i>	Resolutions of the General Assembly
<i>RHDI</i>	Revue Hellénique de Droit International
<i>RIAA</i>	Reports of International Arbitral Awards
<i>RQDI</i>	Revue Québécoise de Droit International
<i>Rut.LJ</i>	Rutgers Law Journal
<i>Sas.LR</i>	Saskatchewan Law Review
SCSL	Special Court for Sierra Leone
<i>Soc.</i>	Societies
<i>Stan.JIL</i>	Stanford Journal of International Law
Supp.	Supplement
<i>TGS</i>	Transactions of the Grotius Society
<i>TLR</i>	Texas Law Review
<i>UChi.LR</i>	University of Chicago Law Review
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
<i>UNJY</i>	United Nations Juridical Yearbook

ABBREVIATIONS

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UNSMIS	United Nations Supervision Mission in Syria
UNTS	United Nations Treaty Series
<i>UPenn.JIL</i>	University of Pennsylvania Journal of International Law
<i>UPenn.LR</i>	University of Pennsylvania Law Review
<i>Ut.JIEL</i>	Utrecht Journal of International and European Law
<i>Van.JTL</i>	Vanderbilt Journal of Transnational Law
VCLT	Vienna Convention on the Law of Treaties
<i>Vill.LR</i>	Villanova Law Review
<i>Vir.JIL</i>	Virginia Journal of International Law
WCR	<i>World Court Reports: A Collection of the Judgments Orders and Opinions of the Permanent Court of International Justice</i> (M.O. Hudson ed., 1934–43)
YIHL	Yearbook of International Humanitarian Law
YJIL	Yale Journal of International Law
<i>ZaöRV</i>	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

